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8 CRYSTAL RIVER CRUISES OPERATIONS COOPERATIEF U.A.
9 and CRYSTAL DEBUSSY LIMITED

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 CRYSTAL RIVER CRUISES) Case No. 2:18-cv-10004
14 OPERATIONS COOPERATIEF U.A.;)
CRYSTAL DEBUSSY LIMITED)

15) **COMPLAINT**

16 Plaintiffs,)

17 vs.)

18 HOWARD NAGELBERG,)

19 Defendant.)
20)
21)
22)
23)
24)

25 Plaintiff CRYSTAL RIVER CRUISES OPERATIONS COOPERATIEF U.A.
26 and CRYSTAL DEBUSSY LIMITED (Together “Crystal” or “Plaintiff”) allege as
27 follows, on information and belief against Defendant HOWARD NAGELBERG
28 (“Defendant” and with Crystal, the “Parties”).

INTRODUCTION

1
2 1. This is an action seeking a judicial declaration against Defendant stating that,
3 pursuant to the terms and conditions of the Cruise Ticket Contract Terms (the “Cruise
4 Ticket”) between the Parties, the Strasbourg Convention on the Limitation of Liability
5 of Owners of Inland Navigation Vessels (1988) (the “Strasbourg Convention”) applies
6 to limit the liability of Crystal for all personal injuries suffered by Defendant on May 1,
7 2018, while he was a passenger on Plaintiff’s riverboat, the Crystal Debussy (the
8 “Vessel”).

JURISDICTION AND VENUE

9
10 2. This Court has original subject matter jurisdiction over this case pursuant to 28
11 U.S.C. §1333 because this is a civil admiralty and maritime case involving the
12 interpretation and enforcement of a maritime contract: the Cruise Ticket. To the extent
13 this Court may also have subject matter jurisdiction on other grounds, Plaintiff elects to
14 designate this claim as an admiralty and maritime claim under Rule 9(h) of the Federal
15 Rules of Civil Procedure (“FRCP”).

16 3. This Court also has jurisdiction over this declaratory judgment action pursuant to
17 FRCP 57 and 28 U.S.C. §§ 2201 et seq., which grant the United States District Courts
18 jurisdiction to declare the “rights and other legal relations of any interested party
19 seeking such a declaration, whether or not further relief is or could be sought” in cases
20 within its jurisdiction.

21 4. Venue is appropriate in this District pursuant to a forum selection provision
22 contained in the Cruise Ticket between the Parties, which forms the basis for this
23 Complaint. See Exhibit A, Paragraph 21.B.

PARTIES

24
25 5. Plaintiff Crystal River Cruises Operations Cooperatief U.A. is a corporate entity
26 incorporated and with its principal place of business in the Netherlands. It was and is
27 the operator of the Vessel.
28

1 6. Plaintiff Crystal Debussy Limited is incorporated and registered in Malta. It was
2 and is the owner of the Vessel.

3 7. Defendant is a resident of and is domiciled in Chicago, Illinois.

4 **FACTUAL ALLEGATIONS**

5 **DEFENDANT BOOKS A RHINE RIVER CRUISE THROUGH CRYSTAL**

6 8. On September 20, 2017, Defendant and his wife booked a Rhine River cruise
7 aboard the riverboat Crystal Debussy for a cruise set to embark in April of 2018 (the
8 “Cruise”).

9 9. The Cruise was set to begin in Amsterdam, the Netherlands, on April 23, 2018,
10 and end in Basel, Switzerland on May 3, 2018, with stops along the Rhine River in
11 Germany and Switzerland.

12 10. The Vessel is a 3016-gross ton riverboat that is 443 feet long and 39 feet wide
13 with four decks. She has 53 passenger suites and is certified to carry 130 passengers.
14 The Vessel is flagged in Malta and her home port is Valletta, Malta.

15 11. On March 13, 2018, the Cruise Ticket and 2018-2019 Terms and Conditions
16 were FedExed to Defendant’s travel agent who, in turn, forwarded these documents on
17 the Defendant. A true and correct copy of the Cruise Ticket that was sent to Defendant,
18 through his travel agent, are attached hereto as Exhibit A.

19 12. These Terms and Conditions were also always available to Defendant on
20 Crystal’s website. The terms can easily be accessed at the following web address:
21 [http://www.crystalcruises.com/legal/crystal-river-cruises-general-ticket-terms-](http://www.crystalcruises.com/legal/crystal-river-cruises-general-ticket-terms-conditions)
22 [conditions](http://www.crystalcruises.com/legal/crystal-river-cruises-general-ticket-terms-conditions). The terms can also be easily located through the “Legal” link on Crystal’s
23 homepage. Alternatively, the Terms and Conditions can be located by clicking on the
24 magnifying glass in the top right corner of Crystal’s homepage and searching “Terms
25 and Conditions.”

26 13. According to the terms of the Cruise Ticket between the Parties, Defendant had
27 until January 22, 2018, to cancel the Cruise without penalty and for a full refund. See
28 Exhibit A, Paragraph 5. Thus, Defendant had over four months to review the Terms

1 and Conditions online before incurring any penalty for cancellation. If Defendant
 2 cancelled between January 23 and March 8, 2018, he would have lost 20% of the
 3 purchase price, and if he cancelled between March 9-23, 2018, he would have lost 50%.
 4 Any cancellation on or after March 24, 2018, would result in the full loss of the
 5 purchase price. Defendant did not cancel his Cruise at any time after booking it or after
 6 receiving the Cruise Ticket.

7 14. Defendant boarded the Cruise on April 23, 2018, in Amsterdam and was
 8 scheduled to finish the Cruise on May 3, 2018, in Basel, Switzerland after travelling on
 9 the Rhine River for 10 days.

10 15. On May 1, 2018, the Vessel arrived in Breisach, Germany on the Rhine River.
 11 While attempting to disembark the Vessel and go ashore, Defendant lost his balance
 12 and fell overboard, sustaining traumatic brain injuries as a result.

13 16. On June 8, 2018, Crystal received a letter from the Chicago law firm of Donald
 14 A. Shapiro, Ltd. stating that it had been retained to represent Defendant and his wife in
 15 their claims against Crystal for Defendant's personal injuries from his May 1, 2018,
 16 fall.

17 17. The parties have a fundamental disagreement on the enforceability of the
 18 Strasbourg Convention limitation of liability described in more detail below. As a
 19 result, there is an actual case and controversy that must be resolved by the Court.

20 **THE CRUISE TICKET TERMS AND CONDITIONS AND THE APPLICATION**
 21 **OF THE STRASBOURG CONVENTION**

22 18. Under United States maritime law and statute, a cruise passenger ticket is a
 23 binding maritime contract.

24 19. The first paragraph of the Cruise Ticket in this case states in all capital letters:

25 IMPORTANT NOTICE TO GUESTS: THE FOLLOWING TERMS
 26 AND CONDITIONS ARE THE ENTIRE AGREEMENT
 27 BETWEEN CRYSTAL CRUISES AND YOU. PLEASE READ
 28 THEM CAREFULLY, AS WE ARE BOTH BOUND BY THEM.
 THESE TERMS AND CONDITIONS ARE SUBJECT TO
 CHANGE WITH OR WITHOUT NOTICE. THIS IS A CONTRACT

1 WHICH AFFECTS YOUR LEGAL RIGHTS, PARTICULARLY
 2 SECTION 13 GOVERNING THE PROVISION OF MEDICAL
 3 SERVICES, SECTIONS 7, 11, 12, 17, 18, 20, AND 21 LIMITING
 4 CRYSTAL'S LIABILITY FOR YOUR DEATH, ILLNESS,
 5 INJURY, OR DAMAGE CLAIMS RELATING TO BAGGAGE OR
 6 PERSONAL PROPERTY, LIMITING YOUR RIGHT TO SUE,
 AND REQUIRING ARBITRATION FOR CERTAIN CLAIMS
 AND WAIVER OF JURY TRIAL.

7 See Exhibit A.

8 20. Paragraph 18 of the Cruise Ticket is specifically referenced above and states that
 9 for Rhine River cruises, Crystal's liability for its passengers' personal injury or death is
 10 limited by the Strasbourg Convention. Specifically, Paragraph 18 states:

11 **18. Liability Limitation for Loss of Life or Injury:**

12 ...

13 B) For cruises on the Rhine and its adjacent rivers, Crystal Cruises
 14 shall be entitled to any and all liability limitations, immunities and rights
 15 applicable to it for ...death, illness and/or personal injury as provided
 16 under the Strasbourg Convention on the Limitation of Liability of Owners
 17 of Inland Navigation Vessels, (1988) ("CNLI"). The CLNI limits Crystal
 18 Cruises liability to 60,000 Units of Account or Special Drawing Rights,
 19 "SDR's" as defined by the International Monetary Fund (approximately
 20 \$82,500 U.S. Dollars, which fluctuates depending on a daily exchange rate
 21 as published in the International Monetary Fund at
 22 http://www.imf.org/external/np/fin/data/rms_sdrv.aspx) multiplied by the
 number of Guests the Ship according to its certificate is allowed to carry,
 not to exceed in any event more than 12 million Units of Account to apply
 to the aggregate of all claims arising against Crystal Cruises out of an
 occurrence.

23 21. As of November 16, 2018, 1 SDR = \$1.382320 USD. As a result, 60,000
 24 SDR's = \$82,939.20. The Vessel is certified to carry up to 130 passengers. As a result,
 25 Crystal's maximum liability to Defendant under the Strasbourg Convention is
 26 \$10,782,096 USD (130 x \$82,939.20).

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1 22. Prior to the Cruise, Defendant had been a practicing real estate attorney in
2 Chicago for over 45 years. As a result, he was familiar with contracts and the binding
3 nature of their terms and conditions.

4 23. Defendant also had ample time to review the Cruise Ticket and familiarize
5 himself with its terms either through the paper copy delivered to his travel agent on
6 March 13, 2018, or the online version of the terms, which were always available on
7 Crystal's website.

8 **FIRST CAUSE OF ACTION**

9 (For Declaratory Relief against Defendant)

10 24. Crystal restates, re-alleges, and incorporates by reference its allegations from
11 Paragraphs 1 – 23 as though set forth in full herein.

12 25. An actual controversy has arisen and now exists between Crystal and Defendant
13 regarding the enforceability of the Cruise Ticket's application of the Strasbourg
14 Convention to limit Crystal's liability. Crystal contends that, under the terms of the
15 Cruise Ticket and applicable law, the Strasbourg Convention applies to limit Crystal's
16 liability to Defendant for his alleged injuries sustained while on board the Vessel to
17 approximately \$10.8 million USD.

18 26. Defendant disputes the application of the Strasbourg Convention to his claims.

19 27. Crystal desires a judicial determination and declaration of the Parties'
20 respective rights, duties, and obligations under the Cruise Ticket with respect to these
21 issues. Such a declaration is necessary and appropriate at this time so that Crystal may
22 ascertain its duties with respect to Defendant's potential claims and the payment of any
23 damages, judgment or other awards that may be recovered against it as a result of
24 Defendant's May 1, 2018, fall.

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1 WHEREFORE, Crystal prays for judgment against Defendant as follows:

- 2 1. An order declaring and adjudging in Crystal's favor that the Strasbourg
3 Convention applies to limit Crystal's liability for any damages sustained by Defendant
4 as a result of his May 1, 2018 fall;
- 5 2. An order awarding Crystal its costs of suit; and
- 6 3. An order awarding Crystal such other relief as the Court deems equitable and
7 just.

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13 DATED: November 29, 2018

/s/ Albert E. Peacock III

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